LEVEL II

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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RGY AND MINERALS
DIVISION

September 4, 1981

B-204493

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigation
Committee on Energy and Commerce
House of Representatives

The Honorable Richard L. Ottinger
Chairman, Subcommittee on Energy
Conservation and Power
Committee on Energy and Commerce
House of Representatives

Subject: Actions by the Bonneville Power Administration to Implement the Long-term Contracting Provisions of P.L. 96-501. (EMD-81-140)

The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, provides for regional electric power planning and development in the Pacific Northwest, ~~which~~ emphasizes the use of conservation and renewable resources, preservation of the region's fish and wildlife, and protection of the environment. ~~Section 4(n)(12)(B)~~ of the Act requires the Bonneville Power Administration (BPA) to keep the cognizant congressional committees "fully and currently informed of actions taken and to be taken by the Administrator under this Act." Concerned that BPA was not carrying out the mandate of this section, you asked BPA for certain information on July 1, 1981, relating to several aspects of its overall implementation of the Act. BPA's response was lengthy, but did not provide as much detail as you requested. On August 4, 1981, you requested BPA to provide a complete response to your earlier letter.

We have been asked by your staff to review BPA's responses; examining first BPA's statements about its responsibilities under section 5(g)(1), which requires BPA to, among other things, offer initial long-term power sales contracts to its customers. The staff expressed concern that BPA may have been seeking to have its customers sign power sales contracts earlier than necessitated by the timeframe set out in the Act. We briefly reviewed BPA's July 24th and August 21st responses to the subcommittees, as well as an August 26th opinion of BPA's Acting General Counsel inter-

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preting section 5(g)(1). (See enclosure I.) This opinion provides support, background, and more detail for the material discussed in BPA's August 21st response to the subcommittees.

BPA required by the Act to offer long-term power contracts

Section 5(g)(1) of the Act establishes the framework for BPA to enter into initial long-term contracts with its different classes of customers. It specifically provides:

> "(g)(1) As soon as practicable within nine months after the effective date of this Act, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act) simultaneously to
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> (A) existing public body and cooperative customers and investor-owned utility customers under subsection (b) of this section;
> (B) Federal agency customers under subsection (b) of this section;
> (C) electric utility customers under subsection (c) of this section; and
> (D) direct service industrial customers under subsection (d)(1)."

Section 5(g)(2) provides that each customer offered an initial long-term contract under paragraph (g)(1) "shall have one year from the date of such offer to accept such contract."

BPA's August 21st response aims to show that BPA has complied with the terms of section 5(g)(1). In BPA's view, compliance requires that within 9 months of the effective date of the Act (September 5, 1981), BPA must have (1) begun negotiating with its customers and (2) simultaneously offered its customers initial long-term contracts. BPA initiated contract negotiations in January 1981, and offered contracts on August 27, 1981.

Observations regarding the contracting provisions of the Act

With respect to section 5(g)(1), we have several initial observations. First, it establishes several prerequisites with regard to BPA's preparation of initial long-term power sales contracts.

-- Time - Negotiations must begin and contract offers must be made as soon as practicable within 9 months of the Act's effective date.

-- Necessary Negotiations - Necessary negotiations must begin for initial long-term contracts.

-- Contract Offers - BPA's customers must be offered initial long-term contracts.

-- Length of Contracts - The initial long-term contracts are subject to the limitations contained in the third sentence of section 5(a) of the Bonneville Project Act 16 U.S.C. 832d(a). This sentence establishes that BPA power sales contracts cannot be for more than 20 years, including extensions and renewals. The term "long-term" is not otherwise defined in P.L. 96-501.

-- How Contracts Offered - The contracts must be offered simultaneously to BPA's different classes of customers.

Second, the following inferences can be reasonably made from the language of section 5(g)(1).

-- No priority for, nor sequence of, negotiations or offers is set out. Therefore, it would appear that BPA can determine whether it makes sense to have negotiations start before offers are made or vice versa.

-- Negotiations may commence and offers may be made at various times during the 9 months following the effective date of the Act. (The statute states that these actions must take place or commence "as soon as practicable" during such period.) This leaves the judgement about when to begin negotiations or make offers up to BPA. Section 5(g)(1) does not state that negotiations and offers must take place or commence at a certain time, only within a certain period.

-- Long-term contracts can be entered into for varying periods of time, as long as they do not exceed 20 years.

-- BPA cannot spend the entire 9 months following the enactment only preparing its contract offers. It must, during this period, begin necessary negotiations for initial long-term contracts.

Third, the term "offer" is not defined in the Act. Under general contract law, a valid offer must contain definite and

certain essential terms, so that if accepted in the form offered, the result will be a binding contract. Examples of essential contract terms are price, time, delivery, and performance. Ambiguity and uncertainty in nonessential contract terms will not invalidate an entire contract. What are considered essential contract terms may vary from situation to situation.

Based on our limited review, it appears BPA has latitude in how it could implement section 5(g)(1). The statute says that, within 9 months of the Act's effective date, BPA has to (1) begin necessary negotiations which would lead to initial long-term contracts and (2) make valid offers to its customers. Under section 5(g)(1), BPA had several options it could choose regarding offers and negotiations. BPA made the management decision to enter into negotiations for more than 8 months in an effort to draft contracts based on information obtained during the negotiating process. While the Act allows for negotiations for a period of 1 year after the offering of contracts, it appears that BPA management decided it would be better to complete as much of the negotiation phase as possible prior to offering the contracts.

Due to the limited time we had to conduct this analysis, we were not able to determine the reasonableness of BPA's decision to take this approach in offering initial long-term contracts. Further, we have not assessed (1) the negotiation process used in preparing the contracts, (2) the prudence of BPA offering 20-year contracts, (3) whether the contract offers meet all the requirements of the Act, and (4) under what conditions BPA can unilaterally modify the initial offers. We are continuing to look at these areas, along with the other material provided in BPA's responses, and will keep you informed of our progress.

Sincerely yours,

J. Dexter Peach
Director

Enclosure

AP

Peter T. Johnson
Administrator - A

Omar W. Halvorson
Acting General Counsel - AP

Interpretation of Subsection 5(g)(1) of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act), 16 U.S.C. 839 (1980)

Subsection 5(g)(1) of the Regional Act requires that, as soon as practicable within 9 months of the effective date of the Act, the Administrator must commence negotiations and offer long-term power sales contracts, as specified therein. It reads as follows:

> "As soon as practicable within nine months after the effective date of this Act, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act) simultaneously to—
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> (A) existing public body and cooperative customers and investor-owned utility customers under subsection (b) of this section;
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> (B) Federal agency customers under subsection (b) of this section;
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> (C) electric utility customers under subsection (c) of this section; and
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> (D) direct service industrial customers under subsection (d)(1)."

The Regional Act became effective on December 5, 1980, and the subsection 5(g)(1) offers must therefore be made within 9 months of that date. The issue has been raised as to whether the Administrator is required to offer each contract in a form that contains terms which are sufficiently definite and certain as to invite acceptance, and which, if accepted, would result in the immediate formation of a binding contract. The language of the statute clearly supports an affirmative answer to this question.

Endeavors at statutory construction commonly begin with an examination of the plain meaning rule, which is that "the meaning of the statute must, in the first instance, be sought in the language in which the Act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms." Also, "where language is plain and admits of no more than one meaning, the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." Caminetti v. United States, 242 U.S. 470, 61 L.Ed. 442, 37 S.Ct. 192 (1917). Modern application of the plain meaning rule has been characterized as an approach to statutory construction which emphasizes "literalism," in which the legislative text is given maximum importance. 2A C.D. SANDS, SUTHERLAND STATUTORY CONSTRUCTION 49 (4th ed. 1973). As such, it is useful to the present analysis.

The language of subsection 5(g)(1) presents no ambiguities or conflicting provisions with respect to the requirement that the Administrator offer long-term contracts within 9 months of the effective date of the Regional Act. The requirement that the offers be in the form of complete and definite contracts which would permit acceptance by the offeree is reinforced by the language of subsection 5(g)(2), which gives each customer one year from the date of offer in which to accept the contract.

Subsection 5(g)(2) reads as follows:

> "Each customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract. Such contract shall be effective as provided in this subsection."

Although the language of these two subsections is clear and unambiguous, the subsections do contain words of art, or "legal terms," which have meanings which are not simply "plain" or immediately apparent, but require further explanation.

The key words in subsection 5(g)(1) are "offer" and "contracts." They are not defined in context, but are generally recognized as legal terms in the law of contracts, and it can be presumed, in the absence of manifested legislative intent to the contrary, or other overriding evidence of a different meaning, that they were used in their legal sense. 2A C.D. SANDS, SUTHERLAND STATUTORY CONSTRUCTION, supra, at 152. Since there is no indication in the legislative history or the statute itself that these terms are not intended to be used in their legal sense, the presumption should stand.

The term "contract" is defined by the following authorities:

> "A contract is a promise, or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." 1 WILLISTON section 1 (3d ed. 1957). 1 Restatement 1, Contracts, section 1, Restatement 2d, Contracts section 1, Tent. Drafts Nos. 1-7, Rev. & Edit. (1973).

> "'Contract' means the total legal obligation which results from the parties' agreement as affected by this Act and any other applicable rules of law." U.C.C. section 1-201(11).

The position that the Administrator must offer complete and definite contracts within 9 months of December 5, 1980, is supported by general contract law definitions of an "offer."

As defined in the Second Restatement of Contracts:

> "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Restatement 2d, Contracts section 24, Tent. Drafts Nos. 1-7, Rev. and Edit. (1973).

An offer is distinguished from mere preliminary negotiations as follows:

> "A manifestation of willingness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until he has made a further manifestation of assent." Id., at section 25.

Therefore, if the Administrator were to offer unsigned outlines or suggestions of proposed terms with invitations to negotiate the specific terms of the contracts, these would not constitute "offers" in contract law.

This interpretation is supported by Williston, who states that an offer is always a conditional promise, which will become a contract upon the performance of the condition. 1 WILLISTON ON CONTRACTS, supra, at section 25. The power sales contracts which the Administrator is required to offer pursuant to the Regional Act will be bilateral contracts, in which the condition which is requested from the offeree is acceptance of the terms of the offer, by means of a promise. Further,

> "Since an offer must be a promise, a mere expression of intention or general willingness to do something on the happening of a particular event or in return for something to be received does not amount to an offer." Id., section 26.

Also, as distinguished from preliminary negotiations, Williston states as follows:

> "Frequently negotiations for a contract are begun between parties by general expressions of willingness to enter into a bargain upon stated terms, and yet the natural construction of the words and conduct of the parties is rather that they are inviting offers, or suggesting the terms of a possible future bargain, than making offers." Id., section 27.

A determination as to what constitutes an offer requires an examination of the nature of the offer, as well as the offeror's intent. In general, the terms of the offer must be sufficiently certain and definite so that if accepted, a court would be able to determine the existence of a breach and provide an appropriate remedy. This is supported by the following authorities:

> "If an offer contemplates an acceptance by merely an affirmative answer, the offer itself must contain all the terms necessary for the required definiteness.
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> * * * *
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> "It is a necessary requirement in the nature of things that an agreement in order to be binding must be sufficiently definite to enable a court to give it an exact meaning.
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> * * * *

"An offer may, however, contain a choice of terms submitted to the offeree from which he is to make a selection in his acceptance. Such an offer is necessarily indefinite but, if accepted in the way contemplated, the ultimate agreement of the parties is made definite by the acceptance. A lack of definiteness in an agreement may concern the time of performance, the price to be paid, work to be done, property to be transferred, or miscellaneous stipulations in the agreement. Especially a reservation to either party of a future untrammelled right to determine the nature of the performance, or a provision that some matter shall be settled by future agreement, has often caused a promise to be too indefinite for enforcement." Id., section 37.

The requirement for sufficient certainty is also supported by the Second Restatement of Contracts.

"(1) Even though a manifestation is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain.

(2) The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.

(3) The fact that one or more terms of a proposed bargain are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance." Restatement 2d, Contracts section 32, Tent. Drafts Nos. 1-7, Rev. and Edit. (1973).

Statements contained in the comments to the above provide further explanation:

"Where the parties have intended to conclude a bargain, uncertainty as to incidental or collateral matters is seldom fatal to the existence of the contract. If the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken, there is no contract." Id., section 32, Comment a.

"The rule stated in subsection (2) reflects the fundamental policy that contracts should be made by the parties, not by the courts, and hence that remedies for breach of contract must have a basis in the agreement of the parties." Id., section 32, Comment b.

Obviously, some degree of uncertainty is allowable and probably unavoidable in any binding contract. The courts look both to the degree of uncertainty and the importance of the uncertain terms, judging whether they relate to incidental or essential matters. However, the essential standard is one of reasonableness; and, assuming the parties intended to make a binding contract, it will not be invalidated on the basis of uncertainty if a court

can determine whether a breach has occurred and can find a reasonable basis on which to award an appropriate remedy, even if the indefinite term relates to an important matter. 1 ANDERSON ON THE UNIFORM COMMERCIAL CODE, section 2-204:25 (1970).

A limited tolerance for the incidence of one or more open terms is also reflected in the following:

> "Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy." U.C.C. section 2-204(3).

Also:

> "The terms of a contract may be reasonably certain even though it empowers one or both parties to make a selection of terms in the course of performance." Restatement 2d, Contracts section 33(1), Tent. Drafts Nos. 1-7, Rev. & Edit. (1973).

However, the more terms the parties leave open, the greater the likelihood that a court will conclude they did not intend to make a binding contract. 1 ANDERSON ON THE UNIFORM COMMERCIAL CODE, section 2-204:25 (1970).

Typically, when parties fashion the terms of a contract, they are not solely concerned with establishing a degree of certainty which would allow a court to determine the existence of a breach and award an appropriate remedy; rather they attempt to ensure the expected performance of promises in a satisfactory manner by providing sufficient detail and anticipating contingencies. The degree of detail and certainty of terms which the Administrator should include in the new power sales contracts should be based on both considerations. The power sales contracts issued by Bonneville Power Administration (hereinafter BPA) since its creation in 1937 should serve as helpful models for this purpose.

It is useful to an analysis of the form of the required offers under subsection 5(g)(1) to examine the general marketing scheme described in subsection 5(g). The two basic requirements that the Administrator offer contracts simultaneously and that the customers be allowed one full year within which to make an acceptance reflect a general legislative scheme in which Congress has limited BPA's usual marketing ability by precluding it from unilaterally modifying or withdrawing the initial contract offers required by subsection 5(g)(1). These limitations have the effect of providing certainty as to the terms of the offer received by each customer, and lend certainty to the evaluation of that offer when considered in relation to offers made to all other customers. This purpose would be defeated if the offers were not made in the form of contracts with specific, complete, and definite terms.

The requirement for simultaneous offers in subsection 5(g)(1) allows each customer the opportunity to ascertain the terms of the power sales contracts offered to all other customers contemporaneously with the consideration of the contract which it has been offered. This requires BPA to reveal, through the simultaneous offers, its entire, integrated firm power marketing plan. Each utility, direct-service industry, or Federal agency will necessarily look to the nature of the offers BPA has made to all other customers when evaluating its own offer. Such evaluation would be meaningless or impossible if BPA had not been required to make offers simultaneously and instead had been allowed to negotiate and offer contracts sequentially. Only by requiring BPA to simultaneously make offers to all qualified customers was Congress able to provide each customer with the opportunity to evaluate the comparative merits and benefits of its offer while deciding whether to accept or reject the offered contract.

The second element in the general marketing plan anticipated by Congress relates to the requirement that an offeree has 1 year within which to accept the offer. Subsection 5(g)(2) provides that "[e]ach customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract." The only contract offer required pursuant to subsection 5(g) is the requirement in section 5(g)(1) that the Administrator within 9 months after the effective date of the Act "offer initial long-term contracts. . . ." Therefore, the reference in subsection 5(g)(2) to the contracts which were offered pursuant to subsection 5(g) can only refer to the initial offer which must be made within 9 months after the effective date of the Act. Any offer which is not made within 9 months after the effective date of the Act cannot be the initial offer and therefore cannot be the offer mentioned in subsection 5(g)(2). Furthermore, the requirement in subsection 5(g)(2) that the customer has 1 year in which "to accept such contract" allows the customer to accept on any day within the year following the offer. There is no required waiting period for acceptance, although the effective dates for the contracts are controlled by other provisions in subsection 5(g).

The effect of allowing each customer 1 year from the date of offer in which to accept is to make the offers irrevocable for that period. This type of binding offer, or option, is recognized by the Second Restatement of Contracts:

> "(1) An offer is binding as an option contract if it
> (a) is in writing and signed by the offeror, recites a purported consideration for the making of the offer, and proposes an exchange on fair terms within a reasonable time; or
> (b) is made irrevocable by statute." Restatement 2d, Contracts, section 89B(1), Tent. Drafts Nos. 1-7, Rev. & Edit. (1973).

The customer has 1 year in which to evaluate its own offer as well as the offers made to other customers. This opportunity for careful analysis of the merits of the BPA offer would have substantially reduced benefit to the customer if BPA, after making the initial offer within 9 months after the

effective date of the Regional Act, could unilaterally modify or withdraw terms of the initial offer. Because contract terms are complex and the contracts are interrelated, a customer must have some certainty that BPA will not ultimately revise terms of the offers to other customers, as well as its own, in order to make a decision on acceptance of the BPA offer. The certainty can be achieved only if BPA is precluded from unilaterally revising, modifying, or withdrawing the offer during the 1-year period allowed for acceptance. If, as some suggest, BPA may unilaterally add or delete terms of the initial offer after receiving additional comments and suggestions from interested parties, then the customer would be unable to evaluate its offer, either separately or in relation to other offered contracts.

These provisions of the Regional Act create a general legislative scheme which provides equity to customers in the contract negotiating process and certainty as to the nature of their offers. This could not be achieved if the Administrator offered brief or incomplete outlines of suggested terms, in lieu of complete and definite contracts.

There is little legislative history on subsection 5(g)(1), none of which specifically addresses the precise issue of this paper, which is the required form of the offer which must take place within 9 months of the effective date of the Regional Act. Both the Senate and House produced Committee Reports on earlier versions of S. 885, which, as amended, became Pub. L. 96-501, or the Regional Act. It is reasonable to assume that these reports may be consulted as representations of legislative intent on the effect of subsection 5(g)(1), in that the equivalent subsections in the bills as reported by these committees were substantially similar to the final version of subsection 5(g)(1). 2A C.D. SANDS, SUTHERLAND STATUTORY CONSTRUCTION, supra, at 203.

The report by the Senate Committee on Energy and Natural Resources confirms generally that the Administrator must offer contracts within 9 months of the enactment of the Regional Act. The report reads in part as follows with regard to subsection 9(c) (the equivalent of subsection 5(g)(1)):

> "This section requires the Administrator to offer long-term (20 year) contracts as provided in this Act to all of his existing public body, cooperative, Federal agency and direct service industrial customers and regional investor-owned utilities within nine months after enactment of this Act. The Committee intends that the Administrator promptly commence negotiating new contracts under this section with each of the authorized parties. . . ." S.Rep. No. 96-272, 96th Cong., 1st Sess., 33 (1979).

The report of the House Committee on Interstate and Foreign Commerce contains two comments on subsection 5(g)(1).

> "The committee amendment seeks to address the allocation issue by directing in section 5(g) that BPA commence, within nine months after enactment, negotiations and offer initial long-term, not to exceed 20 years, contracts to each of the following types of customers:

(A) existing public body and cooperative customers and investor-owned utility customers;
(B) Federal agency customers;
(C) electric utility customers; and
(D) direct service industrial customers." H.R. Rep. No. 96-976, Part I, 96th Cong., 2d Sess., 37 (1980).

This also generally confirms that contracts must be offered within 9 months of the effective date of the Regional Act.

The second comment by this Committee reads as follows:

> "Section 5(g)(1) specifies that the Administrator must simultaneously offer appropriate customers the initial long-term 20-year contracts and initiate negotiations with such customers within nine months after enactment. The customer has one year to complete negotiations and accept the offer or lose the benefits of these provisions." Id., 63.

This, too, refers to the offering of contracts within 9 months of the enactment of the Regional Act. The statement that the "customer has one year to complete negotiations and accept the offer" should not be read as conflicting with the concept that the offers must be in the form of complete and definite contracts, since acceptance itself can be considered as the completion of negotiations.

The report of the House Committee on Interior and Insular Affairs has only one very short and general statement on subsection 5(g)(1).

> "Section 5(g) governs the offering of initial long-term contracts to BPA customers, including such matters as negotiation, timing of the contract offer, and date of contract effectiveness." H.R. Rep. No. 96-976, Part II, 96th Cong., 2d Sess., 49 (1980).

Once again, the requirement that the Administrator offer contracts within a specified time is confirmed.

The comments contained in the Congressional Record are of limited use in reaching an understanding of subsection 5(g)(1). Senator McClure's statement made just before the final Senate passage of the bill contains a brief reference to the offering of power sales contracts, but is not addressed to the specific issue in this paper.

> "Under the provisions of section 5(g)(1), the Bonneville Power Administration must negotiate contracts with the parties; that is, BPA cannot promulgate terms and conditions on a take-it-or-leave-it basis. Further, BPA is to offer the same kind of contract to public and private utilities. . . ." Cong. Rec. Senate, November 19, 1980, at S14658.

Since this statement is not really useful in describing the form in which offers must be made within 9 months of enactment of the Regional Act, there is no need in this instance to evaluate this statement as an aid in interpreting the statute.

Congressman John Dingell's statement in the Congressional Record, Extension of Remarks, also refers to the provisions of subsection 5(g)(1). This statement was entered subsequent to passage of the bill by both the Senate and House, and therefore was not considered by other legislators prior to casting their final votes.

> "SECTION 5(G)--CONTRACTS
> The bill contains broad provisions for contracting. Initially, BPA will offer the contracts with such terms and conditions as the BPA believes appropriate under the bill and then negotiations will begin. Contracts will be offered consistent with the bill. Not all contracts will be identical. They must reflect BPA needs, the concerns of the customers and BPA's obligations, and the bill." Cong. Rec. Extension of Remarks, December 1, 1980, at E5106.

We interpret this statement in harmony with the language of the statute, as a description of the anticipated manner in which negotiations would take place during the 9-month period following the enactment of the Regional Act. That is, Congressman Dingell was probably anticipating that BPA would first prepare draft contract provisions and then seek to negotiate the specific terms of the contracts with the representatives of the entities to whom the contracts would be offered. This is consistent with the clear statutory requirement that the Administrator commence negotiations as soon as practicable within 9 months after the enactment of the Regional Act. Congressman Dingell's statement should not be interpreted as implying that the obligation to commence negotiations does not arise until after the Administrator has complied with the requirement that he offer power sales contracts within 9 months of the effective date of the Regional Act, which would in turn imply that the contracts offered pursuant to subsection 5(g)(1) should be something less than complete and definite negotiated contracts. The express language of Congressman Dingell's statement does not support such an interpretation. However, to the extent that it could be argued that it does, this would preclude consideration of this remark as an aid to statutory interpretation, since legislative history should not be used to the extent that it creates, rather than solves, an ambiguity. United States v. Richards, 583 F.2d 491, 495 (10th Cir. 1978), United States v. Blasius, 397 F.2d 203, 206 (2nd Cir. 1968), cert. dismissed 393 U.S. 1008. The language of subsection 5(g) is clear and unambiguous in describing the requirement that as soon as practicable within 9 months after the effective date of the Regional Act, the Administrator must commence negotiations and offer contracts. In the absence of clear contrary evidence of legislative intent, the unambiguous language of the statute should be followed. National Small Shipments Traffic Conference, Inc. v. Civil Aeronautics Board, 618 F.2d 819, 828 (D.C. Cir. 1980).

Since the language and legislative history of the Regional Act and the principles of general contract law are in support of the conclusion that the offers required under subsection 5(g)(1) should be in the form of complete and definite contracts with terms which are sufficiently certain as to invite acceptance, and which, if accepted, would result in the immediate formation of binding contracts, the Administrator is compelled by law to make such offers within the required time.